Before the
Federal Communications Commission
Washington D.C. 20554

In the Matter of	)	
	)	
Telecommunications Relay Services	)	
And Speech-to-Speech Services for	)	CC Docket No. 98-67
Individuals with Hearing and Speech	)	
Disabilities	)	

COMMUNICATION SERVICE FOR THE DEAF

COMMENTS ON HOVRS PETITION FOR
PARTIAL RECONSIDERATION

On October 1, 2004, Hands On Video Relay Service, Inc. ("Hands On") submitted a petition for partial reconsideration of the FCC's Report and Order and Order on Reconsideration released in June of 2004.[1] A day earlier, Communication Service for the Deaf (CSD) submitted its own petition for reconsideration in support of two of the issues raised in Hands On's petition: the refusal of the FCC to authorize compensation for ASL to Spanish VRS and the FCC's decision to extend the speed of answer waiver.

By these comments, CSD now comes forward to support Hands On's request for a reversal of the Commission's decision to limit the retroactive application of the Commission's revised $8.854 rate for video relay services for 2003-04 to September 1, 2003. CSD agrees with Hands On that this decision was both arbitrary and capricious.

The Commission maintains that the reason that its revised VRS rate is retroactive only to September 1, 2003 is because additional financial data upon which it needed to base that rate was submitted *after* the Commission adopted its Interim Rate Order of June

[1] *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration, And Further Notice of Proposed Rulemaking, CC Dkt. 90-571, CC Dkt 98-67, CG Dkt 03-123, FCC 04-137 (June 10, 2004) ("June 2004 Report and Order").

30, 2003.[2] This reasoning makes little sense, however, when one considers the fact that providers could not know that they needed to provide this additional information until issuance of that 2003 Order.

As is customary to NECA's cost recovery procedures, during the spring of 2003, VRS providers were asked to submit their cost data for VRS. In compliance, providers submitted the same type of data that they had always submitted, supplementing their filings upon NECA's request as needed, prior to the June 30th date by which the final rate would be determined. Again, as was customary, NECA used the data submitted to initially determine the 2003-04 VRS reimbursement rate to be $14.023 per minute. At no time when it decided that rate did NECA give any indication that providers had failed to comply with their cost submission responsibilities.

Only after NECA calculated its 2003-04 rate and submitted that rate to the FCC did the FCC then take that rate, delve into the cost data submitted, and, unbeknownst to VRS providers, exclude cost data that had, for more than a decade been previously allowed.[3] As the FCC is well aware, prior to the June 30, 2003 rate order, VRS compensation had been based on a cost-plus methodology. The FCC's rate order, without prior notice to either NECA or providers, completely discarded this cost recovery methodology, substituting instead a new methodology that relied on a rate of return on capital investment. It makes sense that only then, *after* the FCC changed the rules of this compensation scheme, that providers realized that they had to come forward to supplement their cost filings with data on investment. NECA had not seen fit to collect this data because its calculations were not dependent on its inclusion. Indeed, even this

[2] June 2004 Report and Order at ¶193.
[3] This included profit calculations, taxes, some labor costs and research and development engineering costs.

year NECA acknowledged that it "does not collect data on investment,"[4] and for that reason had to develop a surrogate for working capital in order to determine an equitable rate of return. And again because of this, even this year, the FCC had to issue an interim rate so that it could gather additional cost data not requested by NECA, although this year, the FCC properly acknowledged that its revised rate must be retroactive back to July 1st.

The very fact that the Bureau called its June 2003 interim and kept that rate open until it "completed its examination of the cost data submitted by the providers and other supplemental submissions" proves that the Bureau understood that it needed additional information to complete its re-calculation of the rate.[5] If the FCC wanted to change the cost methodology and the consequent data needed to determine the new rate under that methodology, it needed to put not only the rate on hold but also the date upon which that rate would become effective.

There are two other problems with the FCC's decision to limit the retroactivity of its revised rate. First, as Hands On points out, although the FCC ties the retroactivity of the revised rate to the date that data was received, it never discloses when that relevant data was actually received. In other words, the agency fails to make clear how the September date that was chosen even relates to the submission of this data. Second, the Commission's Order on Reconsideration acknowledges that in recalculating the rate, the Commission "restored some costs that related to engineering support."[6] This proves that the revised rate was at least in part predicated on some data that was erroneously

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[4] NECA Payment Formula and Fund Size Estimate, Interstate Telecommunications Relay Services (TRS) Fund For July 2004 through June 2005 at 7.
[5] June 2004 Report and Order at ¶191.
[6] *Id.* at ¶192. The Commission explained: "we find that some recurring costs are necessary to ensure that VRS assets are properly maintained, and to allow providers to meet the minimum technical standards that we prescribe."

excluded in the Interim rate, data that was in fact submitted *before* that rate was determined.

The Commission's decision to limit the application of the $8.854 rate only to September 1, 2003 is arbitrary and capricious in that it has no rational basis and unfairly penalizes providers for not providing an entirely new type of data that they could not have known was needed before the Interim rate was released. CSD supports Hands On's request to revise this portion of the Commission's order by making the $8.854 rate retroactive from the start, not the middle of the 2003-04 fiscal relay year.

Respectfully submitted,

/s/

Ben Soukup, CEO
Communication Service for the Deaf
102 North Krohn Place
Sioux Falls, SD 57103
605-367-5760

Karen Peltz Strauss

By: Karen Peltz Strauss
KPS Consulting
kpsconsulting@starpower.net
3508 Albemarle Street, N.W.
Washington, D.C. 20008

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